

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 4129 OF 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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HAMABHAI SADULBHAI NAKUM & ANR. - Petitioner(s)**Versus****GOVERNMENT OF GUJARAT & ORS. - Respondent(s)**

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Appearance :

Shri J.D. Ajmera for Petitioner(s) : 1 - 2.

Shri Hukum Singh, Assistant Government Pleader for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 09/03/2007****ORAL JUDGMENT**

The present petition has been filed by the two petitioners,
namely, Hamabhai Sadulbhai Nakum and Meghajibhai Punabhai Nakum.
However, on the last date of hearing, Shri Ajmera, learned Counsel for

the petitioners submitted that he is pressing the Writ Application for and on behalf of petitioner No.2 only. In view of the said statement recorded on 2nd March, 2007, the petition at the instance of the petitioner No.1 is dismissed.

2. On 1st November, 1990, a show cause notice was issued to the present petitioner No.2 on the ground that he committed some misconduct. A reply was filed, however, *vide* Order dated 23rd October, 1992, the petitioner No.2, namely, Meghajibhai, was removed from the Office of the Secretary. The respondent No.2 dismissed the appeal and as the revision was dismissed by the State Government, petitioner No.2 is before this Court.

3. Shri Ajmera, learned Counsel for the petitioner-Meghajibhai, placing reliance upon a single Bench's judgement of this Court in the case of *Velabhai Hardasbhai Patel vs. Hirabhai Hardasbhai & Ors.*, [2006(3) G.L.H. 613], submits that the powers under Section 76B of the Gujarat Cooperative Societies Act, 1961 can be exercised against the Officer of the society and not against any other person or an employee. According to him, undisputedly, Meghajibhai is a paid employee and under the circumstances, the Registrar would have no powers to remove a paid employee of the society.

4. On the last date, I required the State Government to inform me that whether the said judgement has been challenged in a Letters Patent Appeal, but, till date, it is not known to anybody as to whether the judgement has been challenged in the Letters Patent Appeal or has attained finality.

5. The respondents have filed their affidavit. In paragraph-4 of

the counter affidavit, they have submitted as under:

“I say and submit that according to the above provision laid down in the Act, Rules and Bye-laws, it can be seen that all the duties noted herein above and all those duties specified in Bye-law No.47 are purely administrative in nature, and he is administrative head of the Office of the society. All the important works are to be performed by the Secretary. The Secretary enjoys any power to give the directions with regard to the business of the society in any manner as prescribed in bye-law 47(8) of the Society. I further submit that the Secretary had done the work under section 23(a) to certify means to authenticate the document of the society, records of the society as prescribed under Section 41(1) of the Act. Whenever the certified record is produced anywhere it is valid. No due certificate is given by the Secretary cannot be said ordinary work is being done by the Secretary. Therefore looking to the aforesaid nature of the duties to be performed and power enjoyed by the Secretary in the present case, it fulfills the requirement of Section 2(14) of the Act, and therefore, the power of the Registrar under Section 76(B) acted upon on such Officer is legal and proper.”

According to them, all the important works are to be performed by the Secretary and as such, the Secretary enjoys the position and post of an Officer and is amenable to the jurisdiction of the Registrar under Section 76-B of the Act.

6. In the considered opinion of this Court, the judgement in the matter of **Velabhai Patel** (*supra*) shall hold the field. If the Secretary is an employee and is drawing the salary, then irrespective of his Office, he

would be taken to be an employee and in view of the judgement in the matter of ***Velabhai Patel*** (*supra*), he cannot be removed by the Registrar. All the impugned orders are quashed. The petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**